

AMENDED IN SENATE APRIL 23, 2009

SENATE BILL

No. 547

Introduced by Senator Runner

February 27, 2009

~~An act to amend Section 22003 of the Financial Code, relating to lending.~~ *An act to amend Section 11000.1 of the Business and Professions Code, relating to subdivided lands.*

LEGISLATIVE COUNSEL'S DIGEST

SB 547, as amended, Runner. ~~Lending—Real estate: subdivided lands.~~

Existing law provides for the regulation of real estate transactions, including subdivided lands transactions, and defines “subdivided lands” and “subdivision” for these purposes with the exception of undivided interests that meet specified conditions.

This bill would exclude from the definition of “subdivided lands” and “subdivision” an undivided interest in raw land that meets 5 specified conditions, including the condition that a purchaser be given a completed disclosure statement before executing a purchase and sale agreement.

~~Existing law, the California Finance Lenders Law, specifies that the definitions it sets forth govern that law, unless otherwise required by the context.~~

~~This bill would make nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 **SECTION 1.** *Section 11000.1 of the Business and Professions*
2 *Code is amended to read:*

3 11000.1. (a) “Subdivided lands” and “subdivision,” as defined
4 by Sections 11000 and 11004.5, also include improved or
5 unimproved land or lands, a lot or lots, or a parcel or parcels, of
6 any size, in which, for the purpose of sale or lease or financing,
7 whether immediate or future, five or more undivided interests are
8 created or are proposed to be created.

9 (b) This section does not apply to the creation or proposed
10 creation of undivided interests in land if any one of the following
11 conditions exists:

12 (1) The undivided interests are held or to be held by persons
13 related one to the other by blood or marriage.

14 (2) The undivided interests are to be purchased and owned solely
15 by persons who present evidence satisfactory to the Real Estate
16 Commissioner that they are knowledgeable and experienced
17 investors who comprehend the nature and extent of the risks
18 involved in the ownership of these interests. The Real Estate
19 Commissioner shall grant an exemption from this part if the
20 undivided interests are to be purchased by no more than 10 persons,
21 each of whom furnishes a signed statement to the commissioner
22 that he or she (A) is fully informed concerning the real property
23 to be acquired and his or her interest in that property including the
24 risks involved in ownership of undivided interests, (B) is
25 purchasing the interest or interests for his or her own account and
26 with no present intention to resell or otherwise dispose of the
27 interest for value, and (C) expressly waives protections afforded
28 to a purchaser by this part.

29 (3) The undivided interests are created as the result of a
30 foreclosure sale.

31 (4) The undivided interests are created by a valid order or decree
32 of a court.

33 (5) The offering and sale of the undivided interests have been
34 expressly qualified by the issuance of a permit from the
35 Commissioner of Corporations pursuant to the Corporate Securities
36 Law of 1968 (Division 1 (commencing with Section 25000) of
37 Title 4 of the Corporations Code).

38 (6) *All of the following conditions of the raw land are met:*

1 (A) *The undivided interests are sold in raw land that is not*
2 *improved by any structure, except roads or utilities, and with no*
3 *promise on the part of the subdivider to develop the raw land.*

4 (B) *There are 25 or fewer undivided interests.*

5 (C) *The purchase and sale agreement provides for a deposit of*
6 *no more than 3 percent of the purchase price and grants the*
7 *purchaser the right to cancel the agreement and receive a full*
8 *refund of the deposit up to four days before the closing date set*
9 *forth in the agreement.*

10 (D) *There are no blanket encumbrances on the raw land*
11 *following the sale of the first undivided interest.*

12 (E) *The purchaser is given the following disclosure statement*
13 *before the purchaser's execution of the purchase and sale*
14 *agreement:*

15
16 *IMPORTANT DISCLOSURE INFORMATION – RISK FACTORS*

17
18 *CAREFULLY READ ALL OF THE INFORMATION ON THE FOLLOWING PAGES*
19 *BEFORE CONTRACTING TO BUY OR BUYING A TENANT-IN-COMMON INTEREST*

20
21 *SPECULATIVE INVESTMENT. The purchase of raw land is highly speculative.*
22 *While property values have increased over certain periods, there can be no*
23 *assurance that they will continue to do so, and downturns are inevitable. As*
24 *a result, purchasers of tenant-in-common interests have to be prepared to hold*
25 *their interest and pay the related property taxes on the property for an extended*
26 *period of time and to be able to bear the loss of all or a significant portion of*
27 *the price paid for these interests.*

28
29 *GET AN APPRAISAL. The best way to determine the value of the*
30 *tenant-in-common interest you are purchasing is to obtain an independent*
31 *appraisal of the parcel by a qualified MAI appraiser.*

32
33 *ILLIQUID HOLDINGS. Tenant-in-common interests are not liquid. There is*
34 *no established trading market for these interests, as there is for many other*
35 *types of investments such as stocks and mutual funds. As a result, purchasers*
36 *shall not be able to liquidate their interests to fund their retirement needs or*
37 *make other important expenditures.*

38
39 *NO MANAGEMENT—DEVELOPMENT RISK. Neither the subdivider nor any*
40 *third party will be responsible for managing or developing the interests in raw*

land that you are purchasing. Purchasers of the tenant-in-common interests in the property being offered will be responsible for making their own decisions with respect to the property in the manner provided for in the tenancy-in-common agreement. The absence of professional management and the potential difficulty in reaching agreement with other holders of tenant-in-common interests concerning the sale of the parcel could have a material and adverse impact on the profit potential associated with a purchase of the tenant-in-common interests.

If you are contemplating the purchase of a tenant-in-common interest with the idea of reselling it with or without further development of the parcel, you should bear the following in mind:

- A. The parcel may not be developed without first obtaining all necessary government approvals, which are likely to include, without limitation, zoning approvals, parcel maps, building permits, a public report from the California Department of Real Estate, an environmental review under the California Environmental Quality Act (CEQA) and other permits and approvals. These are typically obtained by hiring planners, engineers, surveyors, environmental specialists, lawyers, budget preparers, and other professionals at substantial expense.
- B. Any development of the property will require standard improvements be completed as a condition of approval. The improvements will likely include, but not be limited to, providing access and roads, installation of utilities such as water mains, appurtenances and fire hydrants, electrical power, telecommunications, and conformance with the standards of the local jurisdiction.
- C. It is likely to be very difficult to resell the parcel at a profit without a well-financed promotional campaign or sales organization.
- D. In any effort to resell the parcel, you are likely to be in an unfavorable competitive position with other persons experienced in developing and selling parcels in the vicinity.
- E. It will probably be difficult for you to reach an agreement with owners of surrounding parcels with respect to further development and financing of further development may be hard if not impossible to arrange.

1
2 *F. The prospect that a land developer will purchase your parcel along*
3 *with others for the purpose of effecting improvement is remote.*
4

5 *G. Any plans you as a purchaser might have of developing this land in*
6 *any way should be thoroughly investigated by consulting with*
7 *appropriate local governmental officials before your purchase of the*
8 *property.*
9

10 *WATER, FLOOD, AND EARTHQUAKE RISKS. Under California law,*
11 *governmental approval of any significant residential development requires a*
12 *certification from the relevant water authority that there are adequate supplies*
13 *of water for the homes being developed. If adequate supplies of water are no*
14 *longer available, it may be very difficult to market the real property being*
15 *offered. You should determine if the land is in a flood zone or earthquake fault*
16 *zone.*
17

18 *CONFLICT OF INTEREST. Subdivider is the owner and seller of the*
19 *tenant-in-common interest and is motivated to obtain the best price. Subdivider*
20 *does not represent you in this sale. You are responsible to protect your own*
21 *interest. We urge you to obtain independent legal, brokerage, and tax advice.*
22

23 *PROPERTY TAXES. If all of the units are sold at the offering price, your*
24 *annual property tax bill will be _____ [Insert the purchaser's share*
25 *of annual property taxes]. Property taxes are subject to annual increase in*
26 *accordance with Proposition 13.*
27

28 *BANKRUPTCY, CIVIL, OR CRIMINAL JUDGMENTS AGAINST*
29 *SUBDIVIDER. [List all bankruptcy filings and civil and criminal judgments*
30 *entered against the subdivider, its owners, officers, and directors.]*
31

32 ~~SECTION 1. Section 22003 of the Financial Code is amended~~
33 ~~to read:~~

34 ~~22003. Unless the context otherwise requires, the definitions~~
35 ~~in this article govern this division.~~

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